

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CYNTHIA ANNE ROSS,

Plaintiff,

vs.

No. CIV 99-139 JC/LCS

LEE ENTERPRISES INC., et al.,

Defendant.

MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION

THIS MATTER came before the Court on September 9, 1999 for a hearing on its Order for the Plaintiff to show cause why the Court should not recommend that the case be dismissed for her failure to obey the Court's orders and rules. The Court, having considered the record, proposes finding that good cause has not been established and recommends that the case be dismissed with prejudice.

Proposed Findings

On March 30, 1999 the Court entered an initial scheduling order requiring the parties to make Rule 26 initial disclosures by May 30, 1999, and to provide the Court with a Provisional Discovery Plan and an Initial Pretrial report by May 20, 1999, which would be discussed at the June 3, 1999 Initial Scheduling Conference. Plaintiff did not make her Rule 26 initial disclosures by May 30, 1999, and as a result, the Court entered an Order on June 4, 1999 that she do so by

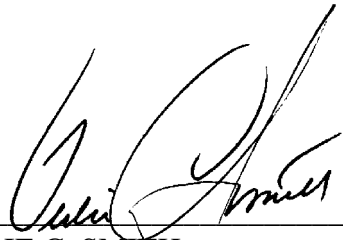
June 17, 1999. Plaintiff attempted to make initial disclosures on June 16, 1999, but her disclosures were not in compliance with the Court's June 4, 1999 Order. Plaintiff never submitted her portion of the Provisional Discovery plan, and she did not submit her portion of the Initial Pretrial Report until June 17, 1999. On May 28, 1999, The District Court sanctioned Plaintiff for violating Fed.R.Civ.P. 11 by pursuing claims that were not well-grounded in fact or law. On July 27, 1999, Defendants moved to compel the Plaintiff to provide initial disclosures in conformance with the Court's June 4, 1999 Order. On August 5, 1999 the Court entered an Order setting an in-person hearing on the Defendants' Motion to Compel for August 20, 1999 at 12:00 p.m. in Albuquerque, New Mexico. Plaintiff did not appear for the hearing, did not request a continuance, and, to date, has not provided an explanation for her failure to appear.

The Court granted the Motion to Compel, requiring the Plaintiff to appear for her deposition, answer Defendant's interrogatories, and pay her Rule 11 fine, all by August 31, 1999. Plaintiff has not complied with this order, and she did not provide any notice or any explanation for her failure to comply. On August 23, 1999, the Court entered an order requiring Plaintiff appear in person before the Hon. Leslie C. Smith, United States Magistrate Judge, on September 9, 1999 at 1:30 p.m., in the first floor courtroom of the United States Courthouse, 200 E. Griggs Ave., Las Cruces, NM 88001, to show cause why the Magistrate Judge should not recommend that her case be dismissed with prejudice for her failure to comply with the Court's June 4, 1999 and August 5, 1999 Orders. (Plaintiff was not yet in violation of the Court's other August 23, 1999 Order at the time the Order to Show Cause was entered) On September 9, 1999 at 10:30 a.m., the Court received a facsimile transmission which appears to be the first page of an "Emergency Motion to Request Continuance" reciting that Plaintiff began a new job on August

30, 1999 and was afraid she would lose her job if she took a day off so early in her employment.

Plaintiff did not appear at the 1:30 p.m. hearing.

The Court may, in its discretion, impose sanctions, up to and including dismissal, if a party repeatedly defies court rules and/or court orders. *Jones v. Thompson*, 996 F.2d 261 (10th Cir. 1993). Based upon the findings proposed herein, the Court recommends that this case be DISMISSED WITH PREJUDICE. Within ten days after a party receives a copy of the Magistrate Judge's Proposed Findings and Recommended Disposition that party may, pursuant to 28 U.S.C. Sec. 636(b), file written objections. Those objections must be filed with the Clerk of the United States District Court for the District of New Mexico, 333 Lomas Blvd. NW, Albuquerque, NM 87102, within the ten day period if the party desires further review; in the absence of timely filed objections, neither the District Court nor the Court of Appeals will review the Magistrate Judge's Proposed Findings and Recommended Disposition.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE